

STATEMENT

OF

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REGARDING A HEARING ON

**“HOMELAND SECURITY INVESTIGATIONS: EXAMINING DHS’S EFFORTS TO
PROTECT AMERICAN JOBS AND SECURE THE HOMELAND”**

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON HOMELAND SECURITY

SUBCOMMITTEE ON OVERSIGHT, INVESTIGATIONS, AND MANAGEMENT

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Washington, D.C.

Chairman King, Ranking Member Thompson, and distinguished Members of the Subcommittee:

Thank you for the opportunity to testify today. Today's hearing, "*Homeland Security Investigations: Examining DHS's Efforts to Protect American Jobs and Secure the Homeland*," is a timely and important one, and implicates a number of vital U.S. national interests—our technological competitiveness, jobs, and our nation's security.

I have been fortunate to have had the opportunity to consider these issues from a variety of perspectives in the public and private sector—as Deputy Assistant Secretary of Defense for Special Operations, as Under Secretary of Commerce for Industry and Security in the administration of President George W. Bush, and as an international lawyer counseling clients in export control and related matters. I hope my testimony today will be of some value to the Members of this Subcommittee as you continue your important work in assessing the efficacy and multiple impacts of DHS investigations.

As an initial matter, I believe we are fortunate to have talented and committed civil servants in our government, including at DHS. Unfortunately, this alone is not enough to either keep U.S. industry globally competitive or dangerous technologies out of the hands of U.S. adversaries.

Ironically, we need to do both more and less. And, we might start by raising our expectations for what constitutes "success" in the export control context. In my view, we should seek to enhance U.S. national security *and* remain the most competitive, the most innovative economy in the world. That objective is not merely desirable, it is absolutely vital—and possible to achieve.

Before giving my general observations about DHS's role in export control enforcement, I would like to simply describe the context in which export control policy takes place.

The Policy Context

The world has changed since the end of the Cold War, and it is changing still. Globalization is reordering our world and certain facets of globalization— economic, technological, and political— are impacting our nation's security profile, and shaping the exercise of our national power.

Today's national security threats are more numerous and varied than ever before, requiring more and more differentiated approaches to mitigate risk to U.S. security interests. At the same time, the global economic and competitive landscape has changed profoundly, fundamentally re-altering the efficacy and opportunity costs of export controls.

Indeed, the very success of our post-war economic diplomacy, the end of the Cold War, and globalization generally, has increased the pool of world-class competitors and altered the dynamics of global economic competition. Unlike when U.S. export controls were instituted, technology, talent and capital are now ubiquitous. Today, U.S. companies compete with the rest of the world, including companies in China and India, but also in Brazil, Korea, Indonesia—and the list goes on.

Consider two startling facts:

- In 2009, King Abdullah University opened its doors in Saudi Arabia. On the day it opened it had an endowment roughly equivalent to that of MIT-- except it took MIT 142 years to get there.
- Today, it is estimated that more than 90% of *all* scientists and engineers live in Asia.

But there's more. The very alchemy of our military technological superiority has also changed. In the past, approximately two-thirds of our nation's military technologies were developed in defense-unique R&D settings, with the remaining one-third generated from adaptations of commercial, off-the-shelf technologies. Today, those proportions have been almost exactly

reversed. Thus, in a very real way, the vitality of our civilian technology industry is now linked to U.S. national security.

In the aggregate, these developments are not altogether a bad thing. In fact, the U.S. welcomes the integration of developing countries into a rules-based global economy. But these changes have (i) challenged the core assumption of our export controls— i.e., that we have something that others do not, (ii) complicated the net-benefit calculus of export controls generally, and (iii) further elevated the salience of U.S. economic competitiveness and technology leadership in national security policymaking.

In this environment, we can no longer assume that export controls always and automatically work to enhance U.S. security interests. Instead, we must be discerning in the application of export controls, rigorous in our enforcement of a right-sized export-control regime, and mindful of the long-term relationship between U.S. security interests and U.S. technology competitiveness.

To some degree, U.S. export control regulations impact the competitiveness of U.S. industry-- and therefore, jobs-- in America. To the extent that such export controls actually advance U.S. security interests, those export controls are necessary. However, to the extent that such controls create protected foreign markets for U.S. competitors without advancing U.S. security interests, they should be reconsidered.¹

While this broader policy calculus is beyond the scope of this hearing (and the mandate of DHS enforcement officials), it should nonetheless inform the tenor of DHS's enforcement work.

DHS and Export Control Enforcement

On a surface level, DHS has impressive institutional tools at its disposal: a large pool of highly-trained special agents, fulsome legal authorities to conduct export control investigations here and

¹ Unless doing so would be inconsistent with other U.S. national interests.

abroad, and a network of law enforcement personnel deployed around the world. Yet, thus far, DHS's enforcement results appear to be modest by comparison to its resources.

In this connection, I offer the following observations:

First, it's not only about DHS.

DHS is an important actor in export control enforcement, but it is not the only one. While there is generally effective coordination at the senior policy and special agent level, there could be improved coordination among the middle-management levels of the various departments and agencies with export control responsibilities. Indeed, our nation's success in export control enforcement matters is largely attributable to the "make it happen" attitude of our special agents in the field. And, while President Obama's creation of an Export Control Coordination Center (ECCC) is helpful, it will not guarantee a positive result in this regard.

Second, DHS should improve its export control enforcement acuity and "operational concept."

Large parts of DHS's investigative culture developed around the investigation of very different kinds of cases (*e.g.*, border security, human trafficking, bulk cash smuggling). As a result, export control acumen is not a prominent part of the DHS investigative self-identity. This is not an insuperable obstacle, but it will require organizational leadership to ensure that export control expertise remains a visible, and highly-regarded, DHS capability.

In addition, DHS has historically focused its export control enforcement efforts on detecting illegal exports, investigating potential violations, and obtaining international cooperation to investigate leads abroad. This approach is reasonable but may lead to sub-optimal enforcement results by not fully leveraging the informational resources of the private sector. DHS should, therefore, refine and build upon Project Shield America to better inform private industry of export control issues and to more effectively engage the private sector as a full partner.

Third, DHS should strengthen its enforcement architecture

Though it did not resolve thorny jurisdictional and other issues, President Obama's creation of the ECCC is a promising initiative to enhance interagency coordination and limit duplicative or conflicting enforcement activities. But, even a Presidential Executive Order is of limited utility without consistent day-to-day leadership attention and without appropriate DHS prioritization. Indeed, in the absence of leadership involvement, the ECCC could make matters worse if it only adds complexity without operational value.

Fourth, DHS should refocus its enforcement activities.

No entity, including DHS, can do everything, everywhere, all the time. This is particularly true in a resource-constrained environment. DHS should refine its classified intelligence gathering and analysis capability, and prioritize its enforcement efforts accordingly. This should be done periodically, to ensure that DHS is focusing in the geographic and other areas of maximum national consequence.

Finally, DHS should accelerate its engagement with allied and partner governments to help address our shared security interests.

DHS should accelerate and elevate its engagement with other governments through its attaché presence around the world. While it should seek to work with all governments of good will, it should prioritize and rationalize its efforts based on their contribution to US and international security interests (e.g., WMD proliferation). This important work should be closely coordinated with the U.S. State Department and, in every case, with our Chiefs of Mission abroad.

Thank you for your kind attention. I would be pleased to answer any questions that you may have at this time.